

Jagbir Singh Vs. State and Another

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Court : Delhi

Decided On : Feb-09-2001

Reported in : 2001IIAD(Delhi)726; 90(2001)DLT16; 2001(57)DRJ768

Judge : Mr. R.S. Sodhi, J.

Appeal No. : Criminal Misc. (Main) 437 of 2001

Appellant : Jagbir Singh

Respondent : State and Another

Advocate for Def. : Mr. M.S. Butalia, Adv.

Advocate for Pet/Ap. : Mr. Dhiraj Yadav, Adv

Judgement :

judgment

R.S. Sodhi, J.

1. Notice. Mr. Butalia, learned counsel for the State, accepts notice.

2. Admit.

3. Learned counsel for the petitioner has submitted that his application for pre-arrest bail has been rejected vide order dated 30.1.2001 on the ground that more offences have been added by the police to the original FIR.

4. Learned counsel was not in a position to give me any Explanation as to why the second pre-arrest bail application was moved when the petitioner had been admitted to pre-arrest bail by order dated 17.1.2001 by the Additional Sessions Judge, Delhi, in FIR No.13/2001, Police Station, Usmanpur. The only Explanation that came from the learned counsel was that the police had added more sections to the original FIR and, therefore, were threatening arrest.

5. It is submitted by learned counsel for the State that if during investigation any changes are made in the offences mentioned in the FIR, the police can take into custody a person even though he has been admitted to pre-arrest bail by the court in the same FIR.

6. If, as has been suggested by learned counsel for the State, the police is allowed such a liberty, it would completely defeat the ends of justice and make orders of the court subject to whims and fancies of the Investigating Officer. In other words, a bail granted could be cancelled by the Investigating Officer by merely adding a section to the FIR or in the daily diary.

7. Having heard learned counsel for the parties, I am of the opinion that once a pre-arrest bail is granted to an accused by a court of competent jurisdiction, no custodial arrest can be made by the Investigating Officer in the same FIR without prior permission of the court in accordance with law. It is not open to the police officer to set at naught the order of pre-arrest bail by merely tinkering with a section in the FIR. The learned Additional Sessions Judge, who has rejected the second application for anticipatory bail on the ground that certain sections have been added in the daily diary, has done grave violence to the judicial authority. I do not subscribe to his interpretation of law.

8. I hold that bail once granted cannot be automatically set at naught by an addition or subtraction of a section of the Indian Penal Code in the FIR. No accused having been admitted to pre-arrest bail can be taken into custody in the same FIR without taking prior permission of the court. In the facts of this case, no restraint other than that imposed by the court can be imposed by the Investigating Officer who, cannot effect custodial arrest of the accused so long as order dated 17.1.2001 has not been modified and/or bail already granted cancelled. In this

view of the matter, I set aside the order dated 31.1.2001 of the learned Additional Sessions Judge and direct that order dated 17.1.2001, granting bail, shall remain in operation so long as the court does not deem it fit to modify it.

9. Criminal Misc. (Main) No.437/201 is disposed of.

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